



STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

July 12, 2005 Special Meeting Minutes

1. CALL TO ORDER

Chair Luce called the July 12, 2005 special meeting to order at 925 Plum Street S.E., Building 4, Room 308, at 10:00 a.m.

2. ROLL CALL

Council members present were:

Hedia Adelsman

Chris Towne

Jim Luce

Department of Ecology

Department of Fish and Wildlife

Chair

Staff in attendance were:

Allen Fiksdal – EFSEC Manager, Mike Mills – Compliance Manager, Irina Makarow – Siting Manager, Mariah Laamb – Council Secretary, Ann Essko – Council Attorney

Guests in attendance were:

Richard Fryhling; Darrel Peeples – Attorney; Chris Mulick – Tri-City Herald; Curt Leigh – Fish & Wildlife.

Guests attending via phone:

Mot Hedges – Energy Northwest; John Lane - Counsel for the Environment; Rick Jones – Walla Walla Conservation District.

3. ADOPTION OF PROPOSED AGENDA

The agenda was presented to the Council for amendments or additions. The agenda was accepted as proposed.

4. WNP-1/4 OFFSITE ENVIRONMENTAL MITIGATION; Subcommittee Discussion

[Editor's note: a number of documents were distributed to Councilmembers for their consideration during this discussion. They are listed in endnote 1.]

EFSEC Manager Allen Fiksdal noted on the record that the Special Meeting was being held for discussion purposes only, and that action on the issues discussed was noticed for the Council's Monthly Meeting scheduled for the afternoon of July 12, 2005.

Mr. Fiksdal presented past activities that had resulted in the genesis of Draft EFSEC Resolution No. 313, WNP-1/4 Site Restoration – Offsite Environmental Mitigation. In 2003, the State of Washington, Energy Northwest, Bonneville Power Administration, and the U.S. Department of Energy-Richland entered into a Four-Party Agreement relating to the site restoration of the terminated WNP-1/4 nuclear power projects. In exchange for cost savings to the Region resulting from the delay of final site restoration of the 1/4 project site, \$3.5 million was paid to the State of Washington (through EFSEC) to be used for "offsite environmental mitigation projects."

In January 2005, the Council received and began considering proposals for funding of such mitigation projects in Benton County. As a result, the Council recently concluded a transaction whereby \$485,000 of the restoration funds was allocated to protection of the Badger Mountain Property in Benton County.

In January 2004, a Council subcommittee was formed to develop a set of criteria and priority factors for project eligibility, and to begin working with state, local, and non-profit sources to identify possible projects for funding. The purpose of today's special meeting was to initiate discussion with the Council on these issues, to determine how the Council will proceed in evaluating future proposals, preferably consistent with agreed-upon project evaluation criteria. Draft Resolution No. 313 is proposed as a mechanism for future Council decisions on this matter. With selection criteria in place the Council will be able to provide consistent review of mitigation proposals. Mr. Fiksdal further noted that the council had not yet received a copy of the draft resolution. Discussion of the resolution would then lead into discussion of two requests for project finding that have been recently brought before the Council.

Mike Mills, Compliance Manager, reviewed the main points of the Four-Party Agreement: that the conditions of the Agreement were negotiated amongst the four parties; that the Agreement gives the Council broad discretion in determining how funding will be allocated; that the Council will consult with Washington State Department of Fish and Wildlife (WDFW); and that the bulk of funds is to be spent for mitigation projects in Benton County.

Initially, a first project, the McWhorter Ranch, (in Benton County) was identified in cooperation with WDFW as a potential recipient of the funds. However, this project did not come to fruition. The Council was then approached by non-profit (Friends of Badger Mountain and Trust for Public Land (TPL)) and local government (Benton County and City of Richland) entities to consider support for the acquisition of the 574-acre parcel on Badger Mountain. Following negotiations, successful funding for this project closed last week and the parcel is now owned by Benton County. Successful fund-raising by the Friends of Badger Mountain exceeded the Friend's pledged contribution for the purchase, and those funds will be allocated to future Badger Mountain project enhancements.

The EFSEC subcommittee (Councilmembers Fryhling, Towne and Adelsman), are continuing their work with local organizations to find other projects in Benton County. However, two projects of regional significance have been brought to the Council's attention: The Hofer Dam Fish Passage project, and the Skookumchuck Conservation project.

The draft resolution proposes that the Council adopt criteria used in the review and approval of funding for the Badger Mountain Project: broad community support, demonstrated partnerships of public agencies and citizen groups; and leveraging EFSEC's funds with local,

public, and private monies. As a result, and in consideration of the guiding priorities set in the Four-Party Agreement, the resolution proposes the four following criteria/policies:

1. Projects or activities shall preserve, mitigate, restore, enhance, improve and/or foster education for or about the environment;
2. At least 51% of the funds shall be dedicated to be spent in Benton County;
3. Projects shall have broad community support (to include but not limited to: citizen groups, public agencies and/or officials, interest groups, private organizations);
4. To the extent possible, projects shall have multiple funding sources, or present an opportunity for EFSEC funds to be leveraged to secure other matching or contributed monies.

The Council members present proceeded to discuss the draft resolution on the issues that follow.

To the Chair's question as to whether the resolution captured the essence of past activities on this matter, Councilmember Adelsman requested that the resolution reflect why a "Request for Proposal" process was not selected by the subcommittee as a process for bringing forward mitigation projects to EFSEC for consideration. The subcommittee preferred to give deference to information and advice from local governments and organizations regarding which projects should be funded, as well as to consultation with WDFW, as required by the Four-Party Agreement. Chair Luce indicated that during the negotiations language regarding "consultation with WDFW" was carefully selected, and such consultation was performed on the Badger Mountain proposal. Councilmember Towne proposed, and it was agreed, that a fifth criterion for project evaluation be added to the resolution: that EFSEC consult with WDFW.

Two additional revisions to the first criterion were also proposed, and agreed to. Chair Luce proposed that activities preserve [...] improve "land, air or water habitat for fish and wildlife". Staff Mike Mills proposed addition of "public use", as this specifically had been considered for the Badger Mountain proposal.

On the issue of where mitigation projects should be located, Councilmembers discussed the subcommittee's notion of inclusion in, or proximity to, Benton County, but agreed that dedication of "at least 51%" of funds to projects in Benton County was consistent with both the Four-Party Agreement and subcommittee meeting notes. Councilmembers agreed that revision of the subcommittee memo (so that the "bulk" of funds now represented "at least 51%") was not necessary, as the memorandum was a recommendation to the Council and thus a basis for the draft resolution being considered. However, Allen Fiksdal noted that the Council should adopt or acknowledge the May 17, 2005 subcommittee memorandum prior to taking action at the afternoon Council Meeting.

On the issue of potential lack of projects in Benton County for expenditure of 51% of the funds and whether a time limit should be established on locating appropriate projects in Benton County, Councilmembers indicated that a time limit for expenditure of the funds was not merited. However, Councilmember Towne questioned staff whether interest accrued on the remaining mitigation funds would be returned to the mitigation fund. Allen Fiksdal and Council AAG Ann Essko responded that lacking specific direction from the legislature, there is no statute that allows such interest to be returned to the fund, and it must be directed towards the state

General Fund¹. Chair Luce and Councilmember Towne encouraged the Council to pursue legislative amendments to allow interest on the mitigation fund to return to the fund and thus make it inflation-proof. Staff also clarified that the mitigation funds contained no federal funding component.

Staff indicated that the proposed mechanism for approval of future individual mitigation projects would be Council action by Motion, after Resolution No. 313 had been adopted. Chair Luce added that each project would be reviewed by the Council on a case by case basis, and the review and resulting motion to approve would reflect the criteria presented in the Resolution.

Concluding review of the Resolution, the Council discussed the meaning of language regarding “matching funds”, agreeing that it did not mean a dollar-for-dollar match, but generically the amount of funds being leveraged from other sources. The total amount of funding leveraged from other sources will be considered by the Council on a case by case basis. The Council could determine if sufficient leveraging was occurring, or whether other funding conditions should be imposed through the negotiations that would be conducted pursuant to the letters of intent issued by the Council to commit funding to selected projects.

The Chair introduced letters received from TPL and the Walla Walla Conservation District requesting funding for mitigation projects. Chair Luce reported that both of the projects showed high levels of community support, as evidenced by the letters of support transmitted to the Council. EFSEC could support the projects as follows: TPL’s Skookumchuck Conservation Project – up to \$1.3 million; and the Hofer Dam fish passage project, up to \$400,000. Staff indicated that if both these projects were realized, \$15,000 would remain of the funds to be expended outside of Benton County.

Turning their attention to the draft letters of intent that would be used for beginning negotiations to provide funding in support of the Hofer Dam and Skookumchuck Conservation projects, Councilmembers discussed contingencies that may have to be considered if leveraged funding was not obtained by the date indicated in the draft letter, and how such contingencies might be different for a phased project such as the Skookumchuck Conservation Project, where EFSEC funding would only be applicable to completion of Phase I of the project.

It was agreed that the letter of intent was not binding on the Council², was sufficiently clear to indicate the Council’s intent to provide the funds if leveraged funds were indeed obtained, and flexible enough to extend the indicated deadline for completing the transaction if needed. As a result, it was agreed that the language in paragraph four of the Hofer draft letter of intent regarding additional funding to be provided by sources other than EFSEC should be changed to:

“The funding is to be contingent on the District obtaining funding, or a binding commitment satisfactory to the Council, in addition to that offered by the Council, and not later than March 31, 2007. Provisions for fund transfer and expenditure will be addressed in a contract to be developed and approved by each of the parties.”

With the correct dollar amounts, this language would also be used in the letter addressed to TPL regarding the Skookumchuck project.

Dick Fryhling concluded the discussion requesting that the letter to TPL indicate a priority for which lands would be purchased first.

¹ Guest Curt Leigh indicted to the Council that WDFW is statutorily permitted to have interest bearing accounts, and manages certain state wildlife funds under those provisions.

² During this discussion Allen Fiksdal noted that the Council was reviewing a draft of Resolution No.313 where the words “is not limited by these criteria” (Draft Resolution, 5th line of 1st paragraph on last page) had not been removed, and that it was indeed staff’s intent to strike that phrase.

[Editor's note: The Council took no action regarding final acceptance or issuance of Resolution No. 313 or the letters that were discussed during this special meeting; however action on acceptance and issuance of these items was scheduled for the EFSEC meeting that had been scheduled for later in the afternoon.]

5: ADJOURN

The Special Council meeting concluded at 11:19 a.m.

Endnote 1: Documents considered by Councilmembers during the discussion.

- Draft Resolution No. 313, WNP-1/4 Site Restoration – Offsite Environmental Mitigation (version of July 12, 2005, a.m.);
- EFSEC Mitigation Subcommittee, May 17, 2005 Meeting Notes (distributed by e-mail to Council May 27, 2005);
- Hofer Draft: Draft Letter of Intent to Provide Funding for Hofer Dam Removal
- July 6, 2005 letter from Peter Dykstra, Trust for Public Land to Mr. Jim Luce, EFSEC Chair, Re: Skookumchuck Conservation Project - Request for EFSEC Funding;
- July 6, 2005 letter from Richard L. Jones, Walla Walla Conservation District, to Jim Luce, EFSEC Chair, regarding funding request for the Hofer Dam Fish Passage project;
- July 11, 2005 letter from Jeff Koenings, Director Washington State Department of Fish and Wildlife, to Jim Luce, EFSEC Chair, Subject: Offsite Mitigation at Washington Nuclear Plants 1 and 4 (including Department of Fish and Wildlife Policy POL-M5002, January 18, 1999, Requiring or Recommending Mitigation);
- Letters of Support in reference to the Hofer Dam Fish Passage project: Senator Mike Hewitt, Representative Bill Grant, Representative Maureen Walsh (June 6, 2005); Gregory A. Tompkins, Gregg C. Loney, David G. Carey – Walla Walla County Commissioners (June 20, 2005); Eric Meyers, Jay Holzmillier – Snake River Salmon Recovery Board (June 7, 2005);
- Letter of Support in reference to Skookumchuck Conservation project: Chris Taylor, Zilkha Renewable Energy (July 7, 2005).